

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID KIRCHER,  
Plaintiff,

File Number: 04-72449  
JUDGE GERALD ROSEN

v.

CITY OF YPSILANTI, CHERYL FARMER,  
Mayor of Ypsilanti, CHARLES BOULARD,  
Building Inspector of Ypsilanti, JON ICESCO  
Fire Marshal of Ypsilanti, ROBERT BARNES,  
And DONALD SHELTON, Washtenaw County  
Circuit Court Judge and TIMOTHY CONNORS,  
Washtenaw County Circuit Court Judge,  
Defendants.

GEORGE E. WARD, P21970  
Attorney for Plaintiff  
1100 Buhl Building  
Detroit, MI 48226  
313-962-0643

ELLIS B. FREATHMAN, III, P34278  
ROBERTS & FREATHMAN  
Attorney for Robert Barnes  
125 North Huron Street  
Ypsilanti, Michigan 48197  
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FILED  
2004 AUG -9 PM 3:01  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DEFENDANT ROBERT BARNES ANSWER TO FIRST AMENDED COMPLAINT

NOW COMES Defendant, Robert Barnes, by and through his attorneys, Roberts & Freathman, and for his Answer states the following:

1. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
2. Admitted.
3. Admitted.

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4. Admitted.
5. Admitted.
6. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
7. Admitted that Defendant Roberts Barnes owns rental properties in the City of Ypsilanti, it is further admitted that the Defendant Robert Barnes has acted as a Court-appointed Receiver and agent of the City of Ypsilanti for purposes of bring Plaintiff's real properties into building and fire code compliance. Neither admitted nor denied that Defendant Barnes has acted "under color of law" or "in concert" with the City of Ypsilanti as Defendant Barnes cannot interpret what precisely is meant by that allegation. Further the statutes and cases interpreting them speak for themselves.
8. Admitted.
9. Admitted.
10. Neither admitted nor denied for the reason that the Statutes speak for themselves.
11. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
12. Neither admitted nor denied for the reason that the allegation is vague, unspecific and inapplicable to Defendant Barnes.
13. Neither admitted nor denied for the reason that the allegation is vague, unspecific and inapplicable to Defendant Barnes, further that the case cited will speak for itself.
14. Denied for the reason it is untrue. The Plaintiff is a notorious slumlord and scofflaw. He has a history of renting properties which are not up to code to the extent that he has been incarcerated for his illegal actions. It is further denied that the Defendant Barnes is a "City Hall favorite" but rather Defendant Barnes simply chooses to abide by the law rather than routinely violate it. Further, the allegation refers to "Plaintiff Barnes", Barnes if a Defendant herein.
15. Denied for the reason that it is untrue. There is no strategy being employed by the Defendants other than a strategy of insisting that Plaintiff Kircher abide by building and fire codes. Further Plaintiff's reliance upon MCL 29.23 is misplaced either due to ignorance or the intentional desire to mislead the Court. Further, the allegations state a legal conclusion as opposed to factual allegations which can be properly answered.
16. Denied that the Defendants lack good faith. Further, Defendant Barnes has no legal authority to enforce building or fire codes.

- A. Denied as untrue
- B. Denied as untrue
- C. Denied as untrue

- 17. Denied that the Defendants have employed any unconstitutional strategy whatsoever.
  - A. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
  - B. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
  - C. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
- 18. Denied that Defendant Barnes has been put in possession of his competitor's properties. Plaintiff Kircher and Defendant Barnes are in no way, shape or form competitors. Plaintiff Kircher rents to (takes advantage of) economically disadvantaged and troubled tenants. Defendant Barnes rents primarily to students and young professionals. Further the allegation is false for the reason that the Court ordered process for Defendant Barnes to rehabilitate the properties calls for the Court to ultimately determine whether the charges for the work were reasonable. Further, the Court of Appeals has upheld the Receiver's compensation plan.
- 19. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
- 20. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
- 21. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
- 22. Denied for the reason that it is untrue.
- 23. Neither admitted nor denied for the reason the Statute speaks for itself and denied that any violations of due process have occurred.
- 24. No answer required. Further the Statute speaks for itself.
- 25. No answer required.
- 26. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
- 27. Denied as untrue.
- 28. Denied as untrue.

28. (sic) Admitted that the lawsuit was filed, denied that there was any intent other than to bring the building up to City fire and building code.
29. Denied for the reason it is untrue. Further, denied for the reason that Plaintiff misstates the terms of MCL 29.23 as well as ignores the additional authority the Court has to order a property owner to undertake repairs.
30. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
31. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
32. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
33. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
34. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
35. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
36. Admitted.
37. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
38. Neither admitted nor denied for the reason that the Order of the Courts speak for themselves.
39. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
40. Denied for the reason there is no unconstitutional taking strategy.
41. Denied for the reason it is untrue.
42. Denied for the reason that there is no "debt-collection order".
  - i. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
  - ii. Denied for the reason it is untrue.
  - iii. Denied for the reason it is untrue.
43. Denied for the reason it is untrue.

44. It is admitted that during the time Defendant Barnes has been in possession of the property, the Plaintiff has not received rent for said property. It is denied he has paid any additional expenses.
45. Denied for the reason it is untrue.
46. No answer required.
47. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
48. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
49. Admitted that Defendant Barnes was appointed Receiver for the Thompson Building on June 14, 2002. Denied that the Order allows Barnes to spend as much as he wants as the Court has the ultimate authority to determine the reasonableness of the expenses.
50. Denied that any of the Defendants have lacked good faith in this matter, or that Defendant Barnes has boasted to anyone about anything.
51. Denied for the reason it is untrue.
52. Denied for the reason that it is untrue. Further, Defendant Barnes is unable to form an answer as to what Plaintiff finds to be important.
53. Denied that Defendant Barnes has taken any actions to reconfigure the Thompson Building. Denied that Barnes is a trespasser in any sense of the word.
54. It is admitted that during the period of time the receivership has been in place, the Plaintiff has been deprived of rents from the Thompson Building. It is denied he was entitled to rents from the Thompson Building for the reason the building was without certificates of occupancy. Further it is false that Plaintiff has had to bear the property taxes and other expenses as he has refused to make any such payments and the Receiver has been caused to make the payments in his stead.
55. Denied that there have been any repeated or singular violations of Plaintiff's due process rights, and further denied that Kircher has been damaged by any of the Defendants in any way.
56. No answer required.
57. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
58. Denied for the reason it is untrue.

59. Neither admitted nor denied for the reason that Defendant Barnes is without sufficient information with which to form an answer.
60. Admitted that on July 12, 2002, Defendant Barnes was appointed the successor Receiver on the Perrin Street property. As to the balance of the allegation the Order appointing the successor Receiver speaks for itself.
61. Neither admitted nor denied for the reason that the Order speaks for itself.
62. Denied that any of the Defendants lacked good faith at any point relevant hereto. Further the factual allegations are denied as untrue.
63. Neither admitted nor denied for the reason that the July 12, 2002 Order speaks for itself.
64. Neither admitted nor denied for the reason that the Defendants cannot discern what is important from a constitutional point of view in the Plaintiff's mind. Further it is untrue that Plaintiff was without notice regarding the reconfiguration of the premises. In fact, Plaintiff had provided with notice and failed to respond.
- 64.(sic) Neither admitted nor denied for the reason that the Judgment speaks for itself.
65. Denied that Defendant Barnes actions were beyond the scope and purpose of the State's Fire Code and of any other laws or ordinances. Denied that Defendant Barnes is a "naked trespasser" as he was all times hereto acting under the Court's order.
66. Denied that the periods in question have been excessive. Further denied that the Plaintiff has been deprived of rents and incomes for the reason that rents collected have been applied to the Receivership and further, Plaintiff has failed to pay property taxes and other expenses pertaining to the premises.
67. Denied for the reason it is untrue. In fact, the Plaintiff has enjoyed an economic windfall in that his properties have been restored to code compliance at very reasonable cost to him.
68. No answer required.
69. Neither admitted nor denied for the reason that the allegation is vague, compound and largely inapplicable to Defendant Barnes.

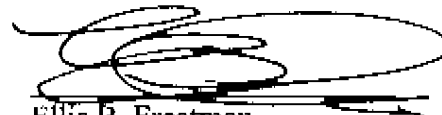
WHEREFORE, Defendant Barnes requests that the Complaint filed herein be dismissed and or that a judgment of no cause of action be entered, and that Defendant Barnes be awarded his attorney fees and costs so wrongfully sustained.

I believe the above to be true to the best of my knowledge, information and belief.

Date: August 5, 2004

Respectfully submitted

Roberts & Freatman

A handwritten signature in black ink, appearing to read "Ellis B. Freatman", written over a horizontal line.

Ellis B. Freatman  
Attorney for Defendant Barnes

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